STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 10, 2003
v	No. 239044 St. Clair Circuit Court
THOMAS ARTHUR MIKETICH, Defendant-Appellant.	LC No. 01-001286-FH

Before: Cavanagh, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv).[1] The trial court sentenced defendant as an habitual offender to twelve months and one day to forty years' imprisonment. Defendant appeals as of right. We affirm.

On the night in question, the St. Clair County Drug Task Force conducted a surveillance of defendant, whom they suspected as being involved in drug activity. As part of the operation, the officers planned to arrest defendant under a valid felony arrest warrant. According to the officers, they suspected that on the night in question, defendant intended to go to Detroit to buy cocaine. Although the officers did not see a buy take place, Deputy Kevin Manns testified that he was stationed near defendant's home when he observed defendant arrive home with another individual. According to the officer, as defendant got out of his car, Deputy Manns walked up to him and asked to speak with him. Defendant ignored him and then proceeded into the house and Deputy Manns followed behind him and stated that he was with the St. Clair County Sheriff's Department.

According to Deputy Manns, once inside the house, Deputy Manns noticed there were several individuals in the living room and he again advised that he was with the sheriff's department. Deputy Manns noticed that defendant was carrying a package of cigarettes in his hand and he quickly followed defendant into the kitchen where he saw defendant place the cigarette package on the kitchen counter. Deputy Manns then informed defendant that he had a

[1] This was defendant's second offense; therefore, he was charged with a second offense notice, MCL 333.7413(2).

warrant for his arrest and took defendant into the living room where Deputy Nicholas Deaner had just entered. Deputy Manns handed defendant to Deputy Deaner[2] and then went back into the kitchen where he opened the cigarette package and found cocaine.[3]

Defendant first argues that the trial court erred in finding the search was a lawful search incident to arrest, and therefore, erred in failing to suppress the evidence.[4] This Court's review of factual findings in a suppression hearing is limited to clear error. *People v Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). The findings will be affirmed unless we are left with a definite and firm conviction that a mistake was made. *Id*. We review de novo the lower court's ultimate ruling with regard to the motion to suppress. *Id*.; *People v Garvin*, 235 Mich App 90, 96; 597 NW2d 194 (1999).

Both the United States and Michigan constitutions guarantee the right of persons to be secure against unreasonable searches and seizures. US Const, AM IV; Const 1963, art 1, § 11. A search incident to arrest is a reasonable search and, thus, allowed by the Fourth Amendment, even though the police do not have a search warrant. *People v Catanzarite*, 211, Mich App 573, 580-581; 536 NW2d 570 (1995), citing *Chimel v California*, 395 US 752; 89 S Ct 2034; 23 L Ed 2d 685 (1969). The warrant exception for searches incident to arrest allows a police officer to search the arrestee for weapons or any evidence on the arrestee to prevent concealment or destruction. The officer may also search the area within the arrestee's immediate control, including closed containers. *Chimel*, *supra* at 763; *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996); *Catanzarite*, *supra* at 581.

In this case, Deputy Manns saw defendant in possession of the cigarette package before the arrest. The search occurred within minutes after defendant was placed under arrest and at the scene of the arrest.[5] See *Catanzarite*, *supra* at 582. The officer removed defendant from the kitchen for safety reasons and a second officer handcuffed defendant. Although defendant was already removed from the area when the search of the package took place, the search was not unreasonable. See *Cantanzarite*, *supra* at 581-582, citing with approval *United States v Turner*, 926 F2d 883, 887-888 (CA 9, 1991) (a search is valid where officers took the arrestee to the next room before conducting the search). Under the circumstances, the search of the package

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[2] Deputy Manns testified that he took defendant by the arm into the living room as a safety measure because he was the only officer at that time in the home. Deputy Deaner arrived immediately and took custody of defendant. Although both officers agree that Deputy Deaner physically handcuffed defendant, the record conflicts with regard to whether the handcuffing took place in the living room or outside.

[3] Evidence established that the cocaine measured thirty-nine grams.

[4] We note that a suppression hearing was held regarding the cocaine found in the cigarette package and some cocaine later found in a drawer in the kitchen. After the hearing, the trial court allowed into evidence the cocaine in the cigarette package, but suppressed the cocaine found in the kitchen drawer.

[5] Although Deputy Manns did not physically handcuff defendant in the kitchen, he informed defendant that he had a warrant for his arrest and he physically took defendant by the arm and led him into the living room, which was only a few feet away.

that defendant had just set down on the counter was not unreasonable; therefore, the trial court did not err in failing to suppress the evidence.

Defendant next argues there was insufficient evidence produced to convict him of the intent to deliver charge. Generally, this Court reviews a challenge to the sufficiency of the evidence de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Ortiz-Kehoe*, 237 Mich App 508, 520; 603 NW2d 802 (1999). It is for the trier of fact to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Questions of credibility and intent must be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

The elements of possession of less than fifty grams of cocaine with intent to deliver are: "(1) that the recovered substance is cocaine, (2) that the cocaine is in a mixture weighing less than fifty grams, (3) that defendant was not authorized to possess the substance, and (4) that defendant knowingly possessed cocaine with intent to deliver." *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748, mod 441 Mich 1201 (1992). Actual delivery is not required to prove defendant's intent to deliver. *People v Fetterley*, 229 Mich App 511, 517; 583 NW2d 199 (1998). "An actor's intent may be inferred from all of the facts and circumstances, and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *Id*. at 517-518 (citations omitted). Possession with intent to deliver can be established by circumstantial evidence and the reasonable inferences arising from that evidence. *Wolfe*, *supra* at 526.

In this case, defendant confessed to his past and present participation in drug trafficking to officers after his arrest.[6] Deputy Deaner testified that defendant confessed to buying cocaine on the night in question and giving some to the passenger in his car. Deputy Deaner also testified that defendant admitted that he was not trafficking narcotics as much as he used to, but that he still sold to friends. Finally, Deputy Deaner acknowledged that although the amount obtained from defendant could be for personal use, in his experience, it could also be a dealer's quantity because dealers often take smaller amounts when out on the streets. Viewing this evidence in a light most favorable to the prosecution, sufficient evidence was produced for a rational trier of fact to find defendant guilty beyond a reasonable doubt of possession with intent to deliver.

Finally, defendant argues that in rendering its decision, the trial court failed to sufficiently articulate the facts regarding the element of intent. In actions without a jury, the trial court must "find the facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment." MCR 2.517(A)(1). "Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or

[6] Although defendant challenged the confession at trial and a hearing was held concerning whether the confession was voluntary, and defendant denied confessing to the officers, defendant raises no issue with regard to the confession on appeal.

particularization of facts." MCR 2.517(A)(2). A court's findings are sufficient where they establish that the court was aware of the relevant issues and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995).

In rendering its oral decision, the trial court sufficiently stated its findings of fact with regard to the element of intent. In its findings, the trial court found that during his interview with police, defendant admitted to being a heavy dealer, defendant admitted to having bought cocaine on the day in question, and defendant also admitted to giving some to his friend and that they smoked it together. The court then stated that in order to find intent, the trier of fact must analyze what the person says, how he does it, the circumstances of doing it and how the person looks while testifying. It is clear that the trial court first stated its factual findings and then stated the applicable law and found that the necessary element of intent existed. The court's findings were sufficient to establish that the court was aware of the issue and correctly applied the law.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Hilda R. Gage
/s/ Brian K. Zahra